

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, et  
al.,

Debtors.<sup>1</sup>

PROMESA  
Title III

No. 17 BK 03283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE EMPLOYMENT RETIREMENT SYSTEM  
OF THE COMMONWEALTH OF PUERTO RICO  
("ERS"),

Debtor.

PROMESA  
Title III

No. 17 BK 03566-LTS

**MOTION FOR LEAVE TO FILE MEMORANDUM OF LAW IN SUPPORT OF ERS INDIVIDUAL  
PLAINTIFF'S OPPOSITION TO UBS' MOTION TO ENFORCE THE PLAN OF ADJUSTMENT**

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<sup>1</sup> The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481); (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808); (iv) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474); and (v) Puerto Rico Electric Power Authority (Bankruptcy Case No. 17-BK-4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as bankruptcy case numbers due to software limitations).

**TO THE HONORABLE COURT:**

Individual Plaintiffs, the Estate of Pedro José Nazario Serrano; the Estate of Juanita Sosa Pérez<sup>2</sup>; Joel Rivera Morales; María de Lourdes Gómez Pérez; Héctor Cruz Villanueva; Lourdes Rodríguez and Luis M. Jordán Rivera, all of them Retirees/Beneficiaries of the ERS and Plaintiffs in a claim for damages described below that is currently pending in the Commonwealth of Puerto Rico Court of First Instance, San Juan Part (the “Commonwealth Court”), without submitting to the jurisdiction of this Court, very respectfully STATE and PRAY as follows:

1. During the Omnibus Hearing held on September 28, 2022, this Honorable Court considered UBS Financial, Inc.’s Motion to Enforce the Plan of Adjustment (Docket No. 21651), as well as the ERS Individual Plaintiff’s Opposition (Docket No. 22175).

2. Despite Article 517 of the Act No. 53-2021 clear provision that the **“Adjustment Plan transactions cannot be used to mitigate causes of action under Act No. 3-2013”**, UBS contended that this Honorable Court should enjoin the ERS Individual Plaintiffs from prosecuting the Commonwealth Action, which started in 2011, because of the Plan of Adjustment recently approved.

3. ERS Individual Plaintiffs contended that the Plan of Adjustment could not be used as ground to dismiss a case from the Commonwealth Court, that was filed prior to the approval of the plan, and that was not included in the plan. The ERS Individual Plaintiffs added that their action before the Commonwealth Court was pursuant to Act No. 3-2013, which recognized them a direct cause of action (*“pro se”*) against UBS.<sup>3</sup> Since the joinder of

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<sup>2</sup> Pedro José Nazario and Juanita Sosa Pérez are deceased. Once their respective declaration of heirs is available, we will make the substitution.

<sup>3</sup> Section 40 of Act No. 3-2013 provides that: *“Cause for action is hereby recognized to the participants and pensioners of the Employees Retirement System of the Government of Puerto Rico and the Judiciary to sue, pro se, nongovernment investment advisers and underwriters in any transaction in which pension obligation bonds have*

the ERS as Plaintiff in the Commonwealth Action in 2017, the Commonwealth Action has not been derivative suit on behalf of the ERS, but a direct, personal claim from the ERS retirees against UBS.

4. After hearing the arguments submitted by both, UBS and the ERS Individual Plaintiffs, this Honorable Court asserted that the Commonwealth Action is derivative in nature, because UBS' contractual duty was only toward the ERS, and not towards the retirees themselves.

5. In that conjuncture, ERS Individual Plaintiffs explained that the applicable Puerto Rico tort statute, Article 1802 of the Civil Code of Puerto Rico of 1930, as amended, imposes liability on **any** person or entity who by an act or omission causes damage to another through fault or negligence. See P.R. Laws Ann. tit. 31, § 5141; *Valle v. American Int'l Ins. Co.*, 8 P.R. Offic. Trans. 735, 738, 108 P.R. Dec. 692 (1979). In light of Article 1802, *supra*, the general duty to cause no harm is applicable against UBS, even if no contract was executed between UBS and the retirees.

6. When questioning the ERS Individual Plaintiffs during the Hearing, this Honorable Court implied that UBS only had a legal duty towards the ERS; not with respect to the ERS Individual Plaintiffs. But the required standard of care imposed by Article 1802, *supra*, is a general one, consisting of fault and/or negligence. ERS Individual Plaintiffs find it is necessary to submit to this Honorable Court a memorandum of law in support of their argument that a personal, direct tort action is exercisable by the retirees themselves against UBS, independently from the tort action the ERS is exercising on its own.

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*been issued by the Employees Retirement System of the Government of Puerto Rico and the Judiciary, for damages caused to the System or its beneficiaries."* (Emphasis added).

**THEREFORE**, the ERS Individual Plaintiffs respectfully request this Honorable Court to: **GRANT** this motion and consequently authorize the ERS Individual Plaintiffs to file the attached memorandum of law in support of their Opposition, at Docket No. 22175, with respect to UBS Financial Services Inc.'s Motion to Enforce the Plan of Adjustment and for Related Injunctive Relief, at Docket No. 21651.

**RESPECTFULLY SUBMITTED.**

**WE HEREBY CERTIFY:** That on this same date a true and exact copy of this motion was filed with the Clerk of Court using CM/ECF system, which will notify a copy to counsel of record.

In San Juan, Puerto Rico, this 4th day of October 2022.

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